

G-008/M-91-1015 ORDER ALLOWING DEFERRED ACCOUNTING TREATMENT AND
REQUIRING INFORMATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by
Minnegasco for Approval of
Deferred Accounting for
Manufactured Gas Plant Site
Investigation, Monitoring, and
Remediation Costs

ISSUE DATE: August 11, 1992

DOCKET NO. G-008/M-91-1015

ORDER ALLOWING DEFERRED
ACCOUNTING TREATMENT AND
REQUIRING INFORMATION

PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On December 31, 1991, Minnegasco filed a petition for approval of deferred accounting treatment for investigation, monitoring, and remediation costs incurred in connection with the clean-up of manufactured gas plants operated in the Minnegasco service territory between the late 1800's until about 1960.

On May 15, 1992, the Minnesota Department of Public Service (the Department) filed its report of investigation and recommendation. The Department recommended that the Commission deny deferred accounting treatment to costs incurred before January 1, 1992, authorize deferred accounting treatment to costs incurred after January 1, 1992, and direct Minnegasco to amortize the deferred costs over five years when the Company completes the project or when it files its next rate case, whichever occurs first.

On May 26, 1992, Minnegasco filed its response to the Department's recommendations. The Company stated that it was Commission precedent to allow deferred accounting treatment and recovery of manufactured gas plant clean-up costs, that the uniform system of accounts adopted by the Commission in Minn. Rule, part 7825.0300 (2) (A) does not require prior Commission approval for "extraordinary" expenses such as those in question here, and that it would be unfair to prevent Minnegasco from recovering all its clean-up costs from ratepayers.

On June 12, 1992, the Department filed comments responding to Minnegasco's May 26, 1992 filing.

On July 9, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. BACKGROUND

Manufactured gas has been produced at seven sites in Minnegasco's Minnesota service territory: at Minneapolis, Brainerd, Excelsior, Hopkins, Jasper, Mankato, and Willmar. By far, the largest of such sites is located in Minneapolis along the Mississippi.¹

Manufactured gas is produced from coal or coke in a technically complex process that produces, in addition to gas, various residuals including tars, ash, and spent oxide box materials.

In the early 1980's, Minnegasco began working with the Minnesota Pollution Control Agency (MPCA) to investigate the Minneapolis site. In 1985, Minnegasco commissioned ERT, Inc. to conduct a preliminary environmental assessment of the other six former gas manufacturing sites. In 1991, Minnegasco completed a number of major reports and began interim response action, such as closure of wells.

III. MINNEGASCO'S MGP COSTS

Minnegasco's investigation, monitoring, and remediation costs associated with the manufactured gas plant sites are expected to be significant. The Company stated that it spent approximately \$2 million on investigation, monitoring, and clean-up associated with the plant sites and related litigation between 1982 and the date of its petition, December 31, 1991. Hereafter in this Order, these costs will be referred to as Minnegasco's manufactured gas plant (MGP) costs.

Looking to the future, the expenditures associated with the sites may be broken into four categories: 1) remediation of the Minneapolis site, 2) capital expenditures at the Minneapolis site, 3) the cost of litigation with the Minneapolis Park Board,² and 4) remediation of the other sites.

¹ Beginning in 1872, manufactured gas from this site was the primary source of gas for Minneapolis until the mid-1940's when natural gas became available. Thereafter, production continued at that site, first to be used in combination with natural gas and later as a supplemental peaking fuel, until the plant's retirement and destruction in 1960.

² The Park Board's lawsuit, filed June 7, 1991, alleges that Minnegasco is responsible for the clean-up costs, the Board's attorney fees, and other damages at Minnegasco's former Minneapolis gas plant site and at a site owned by the Board on which soil from the gas plant site had been dumped. The suit is pending in Federal District Court.

Minnegasco estimated that the cost of remediation of the Minneapolis site for 1992 will be \$5.6 million and between \$1.3 and \$8.2 for 1993, if the MPCA agrees to the Company's recommendations for that site. Capital expenditures for the Minneapolis site will be from \$.9 to \$1.5 million, according to the Company. The cost of defending the Park Board's suit will be between \$100,000 and \$140,000. The Company did not provide an estimate of the cost attendant upon losing the suit. Finally, the Company indicated that after concluding work on the Minneapolis site it would address the other six sites. The Company estimated that the cost of investigating and remediating those six sites would be \$1 to \$4 million per site.

IV. MINNEGASCO'S ACCOUNTING TREATMENT OF MGP COSTS

From 1982 through 1990, Minnegasco recorded its MGP costs as normal operating expenses. In 1991, the Company began to defer these costs, recording them in FERC Account 186 - Miscellaneous Deferred Debits. The Company has placed all its 1991 MGP costs in that account, \$974,000.

V. MINNEGASCO'S PETITION

On December 31, 1991, Minnegasco petitioned the Commission for approval to include its MGP costs in the deferred debit account (Account 186) starting in 1991.

In this Order, the Commission exercises its authority under Minn. Stat. § 216B. 10, subd. 6 (1990) to examine Minnegasco's accounts and prescribe the allocation of its MGP costs therein.

VI. APPLICABLE ACCOUNTING REGULATIONS

In 1974, the Minnesota legislature directed the Commission to establish a system of accounts to be kept by the public utilities subject to its jurisdiction. The statute also provides that a utility that keeps its accounts in accordance with the system of accounts prescribed by a federal agency shall be deemed in compliance with the system of accounts prescribed by the Commission. Minn. Stat. § 216B.10, Subd. 1 (1990).

Subsequently, the Commission adopted a rule which established Federal Energy Regulatory Commission's (FERC's) uniform system of accounts as its own and required Minnesota utilities to comply with that system. Minn. Rules, Part 7825.0300 states in part:

Subp. 2. **Clarification of standards.** All Minnesota utilities shall conform to the appropriate [FERC³] uniform system of accounts with the following clarifications:

- A. [In FERC's uniform system of accounts rules]...the following terms shall be interpreted as stated below for the purpose of regulation under the Minnesota Public Utilities Act: commission or [FERC] shall be interpreted as the Minnesota Public Utilities Commission; utility shall be interpreted as a Minnesota public utility.

The standard treatment required by the uniform system of accounts is to present all items of profit and loss in the year in which they are experienced and to take them into account in calculating the utility's annual net income. 18 CFR 201 (7). The deferred accounting treatment requested by Minnegasco deviates from that aim. It excludes certain costs from the calculation of the utility's annual net income for the year in which they have been or will be experienced and holds them for inclusion in calculating the annual net income of years in which the utility amortizes those expenses. Deferring costs is, therefore, unusual treatment under the uniform system of accounts.

The uniform system of accounts, of course, provides exceptions to the general rule that costs are to be recorded for the year in which they occur: several accounts are specifically established to provide for deferred treatment. However, no deferred account established by the uniform system of accounts specifically provides for Minnegasco's MGP costs.

Minnegasco alleged that its 1991 MGP costs are extraordinary and therefore automatically fit into Account 186 - Miscellaneous Deferred Debits. The Company alleged that General Instruction 7 specifically authorized it to record its MGP costs in Account 186 as extraordinary expenses without Commission approval because they were greater than 5 percent of its 1991 net income.

The text of Account 186 does contain the term "extraordinary expenses". However, the text of Account 186 also clearly excludes debits that are "elsewhere provided for", i.e properly recorded in other accounts. 18 CFR 201 (186). The Company's MGP costs were debits that were clearly "elsewhere provided for." The uniform system of accounts contains general operating expense accounts that correspond to each of the Company's MGP costs. In fact, the Company had been properly recording those expenses in those accounts beginning in 1982 through 1990 and through much of 1991 before it started recording them to Account 186.

³ The rule cites FERC's predecessor agency, the Federal Power Commission.

As for Instruction 7, its 5 percent test does not apply to Account 186 at all. General Instruction 7 indicates that this provision applies only to entries into Account 434 Extraordinary Income and Account 435 Extraordinary Deductions. Note that the text of Account 434 and Account 435 both reference General Instruction 7 while the text of Account 186 contains no similar reference. The portion of Instruction 7 referring to extraordinary items relates not to deferred treatment for those items but to where extraordinary income and expenses are placed on the income statement.

Accordingly, the only way costs such as Minnegasco's MGP costs may be properly recorded in Account 186 is if the Commission grants it an exception to do so pursuant to Minn. Rules, Part 7825.0300, subp. 4 which states:

A public utility may petition the commission for approval of an exception to a provision of the system of accounts. Such exception shall be granted to the public utility for good cause shown.

This rule requires a utility to petition the Commission for an exception before recording costs in violation of that system.

VII. MINNEGASCO'S 1991 MGP COSTS

Minnegasco recorded its 1991 MGP costs to Account 186-Miscellaneous Deferred Debits before filing a petition for approval of this deferred treatment. To approve the Company's untimely request, the Commission would have to grant exceptions to two provisions of the system of accounts. First, as demonstrated previously, the Commission would have to grant an exception to the limitations placed on the kinds of debits that may be booked to Account 186. 18 CFR 201 (186). Second, the Commission would have to waive the requirement that a utility request permission before booking costs to an account that, by its specific terms, was not designed for those costs. Minn. Rules, Part 7825.0300, subp. 2.

The Commission finds that Minnegasco has not shown good cause to waive either requirement with respect to its 1991 MGP costs:

1. First Requirement-Scope of Account 186: The Commission is not convinced that the current practice of accounting for these costs as general operating expenses is unreasonable. The amount of Minnegasco's MGP costs for 1991 appear more consistent with those experienced by the Company from 1982 to 1990 than with those to be experienced in 1992 and 1993. They are relatively small in comparison with the MGP costs

anticipated for 1992 and 1993.⁴ The major escalation in MGP costs will occur during 1992 and 1993.

2. Second Requirement-Timely Request for Exception: Minnegasco has not provided a reasonable excuse for not seeking Commission approval before it began deferring 1991 MGP costs. The Commission had never decided that a utility could begin deferring such costs without first obtaining Commission approval. The Orders cited by the Company provide no basis for a utility to believe that it could begin deferring MGP costs without seeking Commission approval.⁵ In fact, the Commission has expressed itself clearly to the contrary. In Northern States Power Company's 1989 rate case the Commission stated:

⁴ MGP costs for 1991 were \$964,553 compared with at least \$5.6 million for 1992 and between \$2.3 and \$9.7 million for 1993, not including the costs of defending the Park Board suit, which would be experienced later than 1991.

⁵ Minnegasco cited three Orders:

1. In the Matter of the Petition of Northern States Power Company for Authority to Change its Schedule of Gas Rates for Retail Customers Within the State of Minnesota, G-002/GR-85-108, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (December 30, 1985), pp. 21-22. This Order does not involve deferred accounting treatment of gas plant site clean-up costs, but rather the propriety and method of reflecting those costs in rates.

2. In the Matter of the Petition of Northern States Power Company for Authority to Change its Schedule of Gas Rates for Retail Customers Within the State of Minnesota, G-002/GR-86-160, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (December 27, 1987), pp. 11-12. Likewise in this Order, the Commission did not address the propriety of deferred accounting treatment of gas plant site clean-up costs without Commission approval. Instead, the Commission found that amortizing the total clean-up cost as an operating expense and disallowing the unamortized balance as a rate base item would result in a fair sharing of clean-up costs between ratepayers and shareholders.

3. In the Matter of a Request by Peoples Natural Gas for Approval of Accounting Procedures for its Manufactured Gas plant Site Investigation and Clean-up Costs, G-011/M-90/1135, ORDER (March 26, 1991). In this Order, the Commission approved Peoples' request for authority to accumulate its MGP investigation and clean-up costs in its deferred debit account FERC Account 186. The Peoples' Order is inconsistent with the Company's claim that the Commission has established that prior approval for such an accounting change is unnecessary. The Commission would not issue an Order authorizing Peoples to book its MGP costs to Account 186 if Peoples already had the authority to do so.

Statutes and rules give the Commission authority over utility accounts. The Commission must be petitioned for accounting changes by the utilities. Without direct Commission oversight, utilities could manipulate their accounts in a manner contrary to the public interest. (Citations omitted.) In the Matter of the Application of Northern States Power Company for Authority to Increase its Rates for Electric Service in the State of Minnesota, E-002/GR-89-865, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (August 28, 1990), at page 32.

The principle that Commission approval must be sought before beginning to defer costs in Account 186 is well established and the process for doing so is well known to utilities.⁶

Moreover, if Minnegasco's interpretation of the system of accounts is viewed as merely doubtful, its failure to bring the matter to the Commission's attention before beginning to defer the costs in Account 186 violated General Instruction 5 which provides:

To maintain uniformity of accounting, utilities shall submit questions of doubtful interpretation to the Commission for consideration and decision. 18 CFR 201 (5).

In these circumstances, the Commission finds that it would be inappropriate to approve Minnegasco's deferred treatment of its 1991 MGP costs. Accordingly, the Commission will disapprove deferral of the Company's 1991 MGP costs and will require the Company to report appropriate adjusting entries within 60 days of this Order. In so ordering, the Commission exercises its authority under Minn. Stat. § 216B.10, subd. 5 which states:

...all items shall be allocated to the accounts in the manner prescribed by the commission.

⁶ The proper process has been followed by at least two other utilities during this time-period. See Peoples' March 26, 1991 Order cited in footnote 7. See also In the Matter of the Petition of Northern States Power Company for Approval of a Specific Accounting Procedure for Nuclear Decommissioning Costs of the Pathfinder Atomic Power Plant, Docket No. E-002/M-89-120, ORDER ACCEPTING AND ADOPTING SETTLEMENT AGREEMENT (September 21, 1989). In this matter, NSP had properly filed a request for Commission approval to defer nuclear decommissioning costs in Account 186 before undertaking to do so.

V. MINNEGASCO'S POST-PETITION MGP COSTS

The Commission finds that there is good cause to grant an exception and permit Minnegasco to book the MGP costs that it has experienced and will experience subsequent to the filing of its December 31, 1991 petition in Account 186. These costs are substantially larger than those experienced in earlier years. In addition, the Company filed its petition for Commission approval of deferred treatment of these expenses before doing so.

Accordingly, the Commission will approve the Company's recording of its post-petition MGP expenses to Account 186 as of January 1, 1992, the day following the Company's submission of its request for approval.

This Order does not decide how these expenses will be amortized or whether some or all of these expenses will be recovered from the Company's ratepayers. By approving deferred accounting treatment for costs incurred beginning January 1, 1992, however, the Commission is permitting consideration of those questions in Minnegasco's general rate case, Docket No. G-008/GR-92-400.

The Commission is concerned about the potential size of these expenditures and will encourage Minnegasco to take appropriate steps to minimize those expenses consistent with its legal obligations. To assist it in evaluating the Company's efforts in this regard, the Commission will require Minnegasco to file, for each site within the Minnesota jurisdiction and within 30 days of this Order, the following information:

1. support for manufactured gas plant site investigation and clean-up costs including costs to date, recovery options, and accounting treatment to date;
2. a complete analysis of the insurance recovery potential;
3. the complete history of property transfers;
4. the work schedule and cost projection for each site; and
5. the identity of any other parties involved.

ORDER

1. Minnegasco's petition for approval of deferred accounting treatment of its manufactured gas plant (MGP) costs is granted in part and denied in part. Deferred accounting treatment of the MGP costs incurred by the Company starting January 1, 1992 is approved. Deferred accounting treatment of the Company's 1991 MGP costs is disapproved.

2. Within 30 days of this Order, Minnegasco shall file, for each site within the Minnesota jurisdiction, the following information:
 - a. support for manufactured gas plant site investigation and clean-up costs including costs to date, recovery options, and accounting treatment to date;
 - b. a complete analysis of the insurance recovery potential;
 - c. the complete history of property transfers;
 - d. the work schedule and cost projection for each site; and
 - e. the identity of any other parties involved.
3. Within 60 days of this Order, Minnegasco shall file appropriate adjusting entries showing that it has corrected its 1991 books consistent with the denial of deferred accounting treatment of its 1991 MGP costs.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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